

ORIGINAL

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH**

UNITED STATES OF AMERICA

v.

EUGENE KELLY

2013 AUG 15 PM 3 31

: **Crim. No. 2011 CF1 10235**

: **FILED**

: **Judge Hebert Dixon**

: **Sentencing: August 16, 2013**

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The United States respectfully submits this memorandum in aid of sentencing in the above-captioned case. The government respectfully requests that the Court sentence the defendant, Eugene Kelly, to a period of incarceration of 70 years. In support of this request, the government states as follows:

FACTUAL BACKGROUND

The defendant was charged with First-Degree Murder while Armed, Assault with Intent to Kill while Armed, and related weapons offenses for the May 30, 2011, murder of Isaiah Harris and the shooting of Joseph Wilson in the 1400 block of New Jersey Ave. N.W. Both Isaiah and Joseph were 15 years old at the time, and had ventured out that evening simply to talk to a girl. After a five-day trial, a Superior Court jury found the defendant guilty of all charges.

The evidence at trial proved that Joseph Wilson and Isaiah Harris had been hanging out at Isaiah's house in the early evening hours of May 30, 2011. At some point that night, Isaiah Harris contacted a girl and decided walk a few blocks away to try to talk to her in person. Because Joseph Wilson did not want his best friend to go out alone, Joseph accompanied Isaiah to an apartment complex in the 400 block of N. St., N.W. Isaiah spoke to the young woman, but both boys were eventually shooed away. As the boys walked away, they talked about Isaiah's

upcoming prom, and Isaiah joked about how he planned to bring two dates with him. As the boys crossed New Jersey Avenue going north, they heard a gunshot. Joseph saw Isaiah fall to the ground. Although Joseph felt a pain in his leg, he was able to continue running. When Joseph got to a safe place, he noticed that he had been shot through his right leg.

Just before the shooting, the defendant was riding a small trick bike in the area of 5th and O Streets, N.W. The defendant said someone had killed his brother just a few blocks away and said, "someone's gonna pay, I'm gonna go get my gun." The defendant went behind a dumpster in the 1400 block of 5th St. N.W. and retrieved a gun. The defendant then turned onto New Jersey Avenue and approximately 10-15 minutes later fired multiple gun shots. After the shooting, the defendant fled northbound on New Jersey Ave. N.W. towards Rhode Island Avenue on his bike. The defendant was arrested two days later.

While the defendant was incarcerated pending trial, a guard from the D.C. Jail found a note in another inmate's pocket noting a witness's name and directions to the witness's house. A Forensic Document Examiner from the FBI examined that note, other writings seized from the defendant's home, and the defendant's handwriting samples and concluded that the defendant wrote the note found in another inmate's pocket.

ARGUMENT

I. The Defendant's Conduct Alone Warrants a Significant Period of Incarceration

At the time of his tragic and untimely death, Isaiah Harris had just gone shopping for a new suit to wear to the prom. Instead of wearing the suit to his prom, Isaiah's family buried him in that suit. Isaiah's family will never see him graduate, they will never see him get married, they will never see him have children, and they will never see his full potential. As the Court knows from the Victim Impact Statements submitted to the Court, Isaiah was by all accounts a

happy young man who was full of life and who had great potential. The defendant's cruel and violent act not only cut Isaiah's life short, but also took away Joseph Wilson's best friend. Even worse, Joseph witnessed Isaiah being shot and was unable do anything to help Isaiah. According to Joseph's mother, Joseph has not been the same since Isaiah's murder.

The fact that Eugene Kelly shot two innocent boys who did nothing to deserve what happened to them warrants a lengthy period of incarceration. As the defendant said just minutes before the murder, the defendant sought revenge for the murder of his brother by taking the lives of residents of the 5th and O St. area at any cost.

Finally, the Court should also take into consideration the defendant's attempt to obstruct justice by sending a handwritten note with a witness's name and directions to his house with another inmate. Although the defense tried to explain this note as a way to let defense counsel know which witnesses to interview, it is obvious from the note itself, the means by which the defendant chose to send it, and the defendant's obvious attempt to disguise his handwriting, that the only purpose of the letter to was to send a message to the witness.

II. The Defendant's Criminal History

The defendant's history of criminal activity dates back to 1998, and since 2003, he has been arrested in Maryland, Virginia, and the District of Columbia. The defendant has accumulated approximately five adult arrests, resulting in convictions for Attempted Robbery (Superior Court Docket No. 2003 FEL 4173) where his probation was ultimately revoked, and for Receiving Stolen Goods and Grand Larceny in Virginia. Despite being given opportunities as a juvenile and while on probation for Attempted Robbery, it is clear from his record and from this case that the defendant chose to forego those opportunities and continue to engage in criminal activity that ultimately resulted in the loss of an innocent young boy's life. The Court

can and should account for the defendant's long criminal history in determining the appropriate sentence here.¹

III. The Government's Sentencing Recommendation

The government's recommendation and request is that the defendant be sentenced to a period of total period incarceration of 70 years as detailed below:

<u>Count</u>	<u>Offense</u>	<u>Guidelines Range</u>	<u>Government's Recommendation</u>
1	First-Degree Murder while Armed	360 - 720 months	540 months consecutive to counts 2,3 and 4
2	PFCOV	60 - 108 months	60 months consecutive to counts 1, 3, and 4 ²
3	Assault with Intent to Kill while Armed	114 - 204 months	180 months consecutive to counts 1, 2, and 4
4	PFCOV	60 - 108 months	60 months consecutive to counts 1,2 and 3
5	Unlawful Possession of a Firearm	24 - 48 months ³	48 months concurrent to all other counts
6	Carrying Pistol Without a License	14 - 32 months ⁴	32 months concurrent to all other counts

CONCLUSION

¹ "The sentencing court must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. This discretion includes the right to consider information concerning other illegal acts in which the defendant has been involved if that information may reasonably bear on the sentencing decision." Yemson v. United States, 764 A.2d 816, 819 (D.C. 2001) (citations omitted). See also Caldwell v. United States, 595 A.2d 961, 966 (D.C. 1991) ("[T]rial judges have great latitude in the sentencing process. The court may examine any reliable evidence, including that which was not introduced at trial, and may consider a wide range of facts concerning the defendant's character and his crime.").

² See Hanna v. United States, 666 A.2d 845, 856 (D.C. 1995) (PFCOV counts do not merge for purposes of sentencing with while armed offenses and can be sentenced consecutively to the while armed offenses).

³ The Pre-Sentence Investigation incorrectly states that the defendant's guidelines range for Unlawful Possession of a Firearm is 30 to 72 months.


⁴ The Pre-Sentence Investigation incorrectly states that the defendant's guidelines range for CPWL is 14-64 months.

For the foregoing reasons, the government respectfully submits that a sentence of 70 years appropriately accounts for two separate victims, the defendant's blatant disregard for life, his lengthy criminal history, his impact on the community, and most importantly, for the profound loss suffered by Isaiah Harris's family.

Respectfully submitted,


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By:


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CERTIFICATE OF SERVICE

I hereby certify that the Government's Memorandum in Aid of Sentencing was served by email on Jason Downs, counsel for the defendant, this 14th day of August 2013.


HOLLY R. SHICK
Assistant United States Attorney